

2011 HOUSE TRANSPORTATION

HB 1190

2011 HOUSE STANDING COMMITTEE MINUTES

House Transportation Committee Fort Totten Room, State Capitol

HB 1190
01/27/2011
Job # 13548

☐ Conference Committee

Committee Clerk Signature

Janette Cook

Explanation or reason for introduction of bill/resolution:

HB 1190 is a bill relating to distracted driving; relating to fees for a moving violation; and to provide a penalty.

Minutes:

Attachments 1-4

Chairman Ruby, District 38 in Minot, introduced HB 1190 and spoke in support of the bill.

Chairman Ruby: The reason that I introduced this bill because before session started we all started to hear the information about texting. We heard that the bill was going to come before us again. There was also discussion that I heard or saw asking about distracted driving. In some of the discussion they wondered if we don't already have distracted driving laws that handle this. I contacted legislative council to find out which laws are related to distracted driving. They told me that there are none. We do have care required, but as far as something that would distract us, there is nothing. One of the issues that I have always had with texting and cell phone bills is that they always deal with one particular device. So, I discussed some things with legislative council and asked them how to define distracted. Representative Klemin discussed the three types of distractions in the previous bill. It is difficult to enforce having your mind distracted. The main thing that causes distraction is taking your eyes off of the road. That is how it is defined in this bill. One thing that frustrated me with saying a device and the bill that we previously heard was, if you are reading this it is illegal (held up his cell phone), but if you are reading this (held up a piece of paper), then it is not. You are just as distracted. I have had many people tell me that they have seen people reading a book or a newspaper while driving. There are all kinds of distractions. One of the problems that we have is that it is difficult to enforce. We have the problem of distinguishing between someone looking down to dial a number, and someone looking down to send a text. One is legal, but one is not. A person could get pulled over for it because it is a primary offense. They can't tell if you are texting or dialing. Last session the bill came before us dealing with the texting. The comment was made by a representative that you could be driving down the road perfectly and not causing one traffic violation, and you could be stopped for a moving violation. But, in this bill, if you are doing something that distracts you, and it causes a violation, then, when you are pulled over for something else as primary offense, you could also get an added fine as a distracted offense. That is what this bill does. It is simple. It is a secondary offense, and I know that law enforcement doesn't like those. Our seatbelt law is a secondary offense right now.

Representative Delmore: Could it vary from one person to another according to what they are able to do without having visual contact? As it is written in here it states, "may not engage in activity that requires the use of the operator's sight, unless the activity involves operating or using . . ." Is it possible that some people would be more susceptible to this bill than others because it may be a habit for some and not others?

Chairman Ruby: That is the exact reason that it is a secondary offense, based on another action. Someone that is doing something and not doing anything wrong while they are doing it, will not get a citation. That is the point of this bill, it allows for the flexibility.

Representative Kim Koppelman, District 13 in West Fargo, is a co-sponsor on HB 1190. He spoke in support of HB 1190. He provided four handouts for the committee to use as reference. See attachments 1 – 4.

Representative Kim Koppelman: I signed on to this bill because I think that this will be a better way to get at this issue than banning a particular activity. I had a meeting with our police chief in West Fargo a few months ago, and we talked about this issue. He told me that he doesn't like texting bans. He said that if you ban one type of activity, it doesn't take care of the others. You are focused into a car to see if someone is texting vs. trying to look at their driving and other law enforcement duties. I think it is summed up best by a story I like to tell. An older gentleman was complaining about young female drivers. He said that he couldn't believe the way these young women drive. He pulled up to a stop sign the other day, he looked in the car next to him, and this young lady was putting her make-up on while she was driving the car. He said that he got so upset that he dropped his razor and spilled his coffee all over his newspaper. I think that you understand the point. There are a lot of things that distract us. I am completely for safe driving. Some would allege that we can deal with this now under our "care required" statute, but that specifically talks about care being required and is applicable to many other things, such as driving too fast on an icy road, etc. They are really not distracted driving, but they have to do with having control of your vehicle. As I thought about this, I decided that it does probably make sense for us to have something on the books to address the broader issue of distracted driving. That is why I support this type of approach.

Representative Kim Koppelman: I am going to pass out some literature for you to read at your leisure. One of them is from 2005. See attachment #1. It talks about banning cell phones while we drive. Most of us have used a cell phone while driving. I try to be very careful, but I use a cell phone while I drive. This is just an example of where I think that we will be on texting in a few years.

The second article from "USA Today" states that texting bans may add risk to roads. See attachment #2.

The third article is from the Suggested State Legislation Committee of the Council of State Government which I serve on. See attachment #3. This committee looks at legislation from all around the country and decides if some of it should go into a book that we publish

called SSL. We had quite a debate about this issue as well. The article will give you an overview of what different states have done.

The fourth handout is a law from the state of Maine. See attachment #4. If we are looking at alternative approaches or amendments, this is something we may like to look at.

I am all for safe driving, and I feel that is what we should focus on rather than activities that cause unsafe driving.

There was no further support for HB 1190.

There was no opposition on HB 1190.

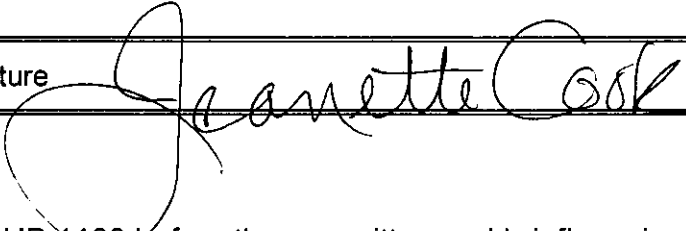
The hearing on HB 1190 was closed.

2011 HOUSE STANDING COMMITTEE MINUTES

House Transportation Committee
Fort Totten Room, State Capitol

HB 1190
02/04/2011
Job # 14044

☐ Conference Committee

Committee Clerk Signature 

Minutes:

Chairman Ruby brought HB 1190 before the committee and briefly reviewed the intent.

Vice Chairman Weiler moved a **DO PASS** on HB 1190.

Representative R. Kelsch seconded the motion.

Representative R. Kelsch: I like this bill. Instead of discriminating against one distraction it is all encompassing. It is not bad to have it as a secondary offense, especially to get people acclimated to not practicing the distractions.

Chairman Ruby: The seatbelt law is a secondary offense, and we have an 82% compliance with that which is higher than some states that have it as a primary offense. I think that just having it as a law leads to some people being safer with it.

Representative Owens: I don't have a problem with texting being a secondary offense. I will resist the passage of this bill because of the subjective nature of the term "not engaged in an activity". What activity? It is too general for me.

Representative Gruchalla: I am also going to resist the motion, particularly because of the secondary enforcement. I think when we pass law, we want them enforced. With the seatbelt law, if someone drives by an officer, and the seatbelt is clearly not on, the officer cannot enforce that statute. I think that it should be a primary enforcement, so that shows that we want it enforced in all circumstances.

Chairman Ruby: I see this as being a little different. With a seatbelt until you are in an accident it isn't really an issue. The main thing with this is that you actually have to have done something wrong to be pulled over. There are many things that distract you from driving. It is a broad term, but if the distraction causes you to do create a violation on the road, then that should be an additional fine. You weren't paying attention to the road, and it caused a problem.

Representative Louser: We have had a lot of law enforcement tell us that they don't have the resources to enforce different violations. This would be another enforcement if it were primary.

A roll call vote was taken on HB 1190. Aye 8 Nay 6 Absent 0

House Transportation Committee

HB 1190

02/04/2011

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The motion carried.

Vice Chairman Weiler will carry HB 1190

Date: 2-4-11

Roll Call Vote #: _____

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1190

House TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Weiler Seconded By R.A. Kelsch

Representatives	Yes	No	Representatives	Yes	No
Chairman Ruby	X		Representative Delmore	X	
Vice Chairman Weiler	X		Representative Gruchalla		X
Representative Frantsvog		X	Representative Hogan		X
Representative Heller	X		Representative Onstad	X	
Representative R. Kelsch	X				
Representative Louser	X				
Representative Owens		X			
Representative Sukut		X			
Representative Vigasaa		X			
Representative Weisz	X				

Total (Yes) 8 No 6

Absent 0

Floor Assignment Weiler

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1190: Transportation Committee (Rep. Ruby, Chairman) recommends **DO PASS**
(8 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1190 was placed on the
Eleventh order on the calendar.

2011 SENATE TRANSPORTATION

HB 1190

2011 SENATE STANDING COMMITTEE MINUTES

Senate Transportation Committee
Lewis and Clark Room, State Capitol

HB 1190
March 17, 2011
16094

☐ Conference Committee

J. Lange

Explanation or reason for introduction of bill/resolution:

Relating to distracted driving.

Minutes:

Written testimony

Chairman Senator G. Lee opened the hearing on HB 1190 relating to distracted driving; relating to fees for a moving violation.

Representative Ruby, District 38, introduced HB 1190. He said the bill you have before you is an alternative option from HB 1195. In HB 1195 you heard the importance of not texting and driving. The problem is there are other distractions. He talked with Legislative Council and they said there was nothing in the code about distracting driving and a penalty. They have care required but it is not really associated with distracted driving, it is more an action when you are driving. The problem he has with the texting ban is that it is only one distraction; HB 1190 is a much boarder bill. He explained that driving while reading the paper, watching a movie, or reading a book are distractions while driving. HB 1190 is a boarder version of distractions. Representative Ruby explained the bill. First of all it is a secondary offense and he admitted that law enforcements does not like secondary offenses. He handed out two information sheets from newspaper stories relating to texting ban. They tell how difficult it is to enforce just a texting ban. Second piece of information was on an accident report where a woman was distracted by a child in her vehicle that struck a bus. Information #1

Senator Mathern asked what the consequences are if we pass both bills.

Representative Ruby explained what the House did and why they have both bills in the Senate. The texting doesn't really deal with all distractions and it has tough penalties and the distraction bill is broader. He stated that he regretted they didn't work harder on these two bills and address some of those penalties.

Senator Sitte asked if there was any discussion with law enforcement since HB 1190 should include IPOD and MP3 Players and all those other devices. Will this make it easier for law enforcement to take a look at all of those devices when they are making a stop?

Representative Ruby said that he did show this bill to some law enforcement in Minot and they didn't make any comments on the enforcement of it. They didn't like the secondary offense but I personally believe it is the better way to go.

Representative Koppelman, District 13, testified in support of HB 1190. He said that he shares much of what Representative Ruby said. He said that he is a co-sponsor of this bill because he wanted to make sure that we exercised and passed the most responsible comprehensive and common sense approach to this problem as we could. We have to discuss whether we are going to focus on behavior or technology? He presented information on state texting laws, and articles he had complied with the emphasis on behavior related to distractions. Information #2, #3, #4, #5

Senator Oehlke asked if instead of putting more laws in place maybe we need to fund more law enforcement. He asked how you enforce behavior.

Representative Koppelman said that is why his police chief said that he would rather have his officers looking at driving behavior versus peering into a car to see what they are doing. He said that we should be reasonable about how we approach the issue.

Senator Oehlke asked if there was a definition between distracted driving and reckless driving.

Representative Koppelman believes that reckless driving rises to a higher standard and involves something beyond distraction and probably beyond carelessness to a point where there is a deliberate decision to be reckless. Distraction is something different, you take your eyes off the road and it may cause danger. It is a lesser standard.

Opposing testimony

Keith Witt, Chief of the Bismarck Chief Department, said that his testimony may not be opposing but leaning toward neutral. He said they were in favor of anything to make traffic safer. He said that he had a couple of concerns with HB 1190. He said that on line 10 it does not define the word "traffic". Also there is concern on the language about the built in accessories and there is no exception for built in accessories for law enforcement.

Senator Oehlke asked for his opinion on definition of reckless driving and if it would be comprehensive enough to cover distracted driving.

Chief Witt said the short answer is no. Reckless driving has conduct involved and has more consequences. In this bill you have to have something bad happening before you have a violation.

Senator Lee asked about the care required statue and how does that include what is discussed in this bill.

Chief Witt replied that this bill would be more restricted and possibly easier to prove than a care required or careless driving. With this bill it is a secondary enforcement so often difficult to enforce.

Senate Transportation Committee

HB 1190

March 17, 2011

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Senator Lee closed the hearing on HB 1190.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Transportation Committee Lewis and Clark Room, State Capitol

HB 1190
March 25, 2011
16021

☐ Conference Committee

Spange

Explanation or reason for introduction of bill/resolution:

Minutes:

Committee Work/Action

Chairman Senator G. Lee opened committee work on HB 1190 relating to distracted driving.

Senator Lee presented amendments 11.0170.01002 and explained that it hog houses the bill. It puts it under the care required section making the fine fifty dollars and it is a moving violation and continues to have a two point penalty. It does rewrite the definition to include the behaviors that we have talked about. It also deals with the behavior versus trying to make a list of things we don't like that people do when they drive that cause them to be distracted. These amendments deal with the behavior. The amendments also makes distracted driving a primary offense and he believes that it is recognized to be more enforceable then some of the individual bans. Attachment #6

Senator Mathern believes that in section 2, 1-6 are already essentially embodied in the narrative that we have in present law. He asked what Senator Lee's rational was to go to a list.

Senator Lee pointed out that it was somewhat unclear even to law enforcement as they read the narrative. Presently, it is a run on of two sentences and it is all "and" so that if you did the first you would have to do the second and the third and the fourth potentially to be stopped for that violation. The six tenets that are there seem to spell out specifically.

Senator Sitte was concerned about the meaning of an inattentive manner. For example a mother turns her head to look in the backseat at her child, is that justifiable grounds to be pulled over.

Senator Lee answered that there needed to be probable cause. For example if she is looking back to discipline or care for a child and she is weaving on the road that could be probable cause.

Senator Sitte asked if the mother's driving was fine and they saw her doing something else, could they pull her over.

Senator Lee replied that it is care required and it could be perceived that way but he believes the officer would need to recognize some behavior associated with that activity that caused them to do something careless or imprudent.

Senator Mathern asked for an explanation on the point penalties.

Senator Lee said it is a moving violation care required in operating so it has a two point deduction and currently a \$30 fine.

Senator Nething said that he had a problem with going from careful to careless, prudent to imprudent and attentive to inattentive.

There was a wide range of thought whether the language gives more latitude or if it is descriptive enough. Senator Lee pointed out that laws aren't made for prudent drivers or attentive drivers or people that drive carefully. They are made for people who are careless, imprudent and drive carelessly and improperly.

Discussion continued on what inattentive driving is. Senator Oehlke gave an example of when he encountered what he would consider an inattentive driver.

Senator Sitte said that her compromise could be to raise the fee to \$30 and get rid of the minimum below that and her wishes would be to leave the wording in the positive form like we have in the present law.

Senator Mathern asked if Senator Lee had spoken to any law enforcement officers about the wording in the amendment for 39-09-01.1

Senator Lee referenced testimony from the Bismarck Police Chief and he said that this would provide a more direct approach to enforcement. He added that it does not say they can't give a warning.

Senator Nething asked if we adopt this amendment and bill will it replace the texting bill.

Senator Lee replied that this covers those ideas but it would be up to the committee in how they handle these bills. Senator Lee said that he had an issue with the texting bill as it is and he would prefer this approach if we are going to pass one of them.

Discussion followed on careless driving and care required driving and the definitions found in the present law.

Senator Mathern asked what the rational was in the amendment to have a specific fine versus a range.

Senator Lee wanted it to be enough of a fine to be significant along with the two point deduction.

Senator Nodland pointed out that money isn't a real deterrent anymore. He thinks we should be adjusting our fines higher in the century code.

Senator Mathern (not audible) said that he doesn't see this bill as an alternative to the texting bill. He would encourage a range of fines. He has concern that the amendment isn't clear in behavior terms.

Senator Nodland moved to adopt the amendment.

Senator Oehlke seconded the motion.

Senator Sitte opposed the amendment.

Short discussion followed on the abilities to multi-task and studies showing that it is not humanly possible to multi-task in the manner that many people think they can.

Roll call vote: 3-3-0. **Motion failed.**

Senator Nething moved a **Do Not Pass**.

Senator Nodland seconded the motion.

Roll call vote: 4-2-0. **Motion passed.**

Senator Oehlke is the carrier.

March 23, 2011

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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1190

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 5 of section 39-06.1-06 and section 39-09-01.1 of the North Dakota Century Code, relating to care required; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 39-06.1-06 of the North Dakota Century Code is amended and reenacted as follows:

5. For a violation of section 39-09-01.1, or an ordinance defining care required in driving, a fee of ~~not less than ten dollars nor more than thirty~~ fifty dollars.

SECTION 2. AMENDMENT. Section 39-09-01.1 of the North Dakota Century Code is amended and reenacted as follows:

39-09-01.1. Care required in operating vehicle.

~~Any person driving a vehicle upon a highway shall drive the vehicle in a careful and prudent manner, having due regard to the traffic, surface, and width of the highway and other conditions then existing, and shall give such warnings as are reasonably necessary for safe operation under the circumstances. No person may drive any vehicle upon a highway in a manner to endanger the life, limb, or property of any person. An individual may not operate a vehicle on a highway:~~

1. In a careless manner;
2. In an imprudent manner;
3. In an inattentive manner;
4. In a manner that creates a hazard to the life, limb, or property of any person;
5. Without having due regard to the existing conditions, including the traffic, surface, and width of the highway; or
6. Without giving warnings as are reasonably necessary for safe operation under the circumstances."

Renumber accordingly

Date: 3-25-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1190

Senate Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.0170, 01002

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Noddland Seconded By Senator Oehlke

[illegible]

Total (Yes) 3 No 3

Absent 0

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Motion failed

Date: 3-25-11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1190

Senate Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☒ Do Not Pass ☐ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Nething Seconded By Senator Nodland

Senators	Yes	No	Senators	Yes	No
Chairman Gary Lee		✓	Senator Tim Mathern		✓
Vice Chairman Dave Oehlke	✓				
Senator Dave Nething	✓				
Senator George Nodland	✓				
Senator Margaret Sitte	✓				

Total (Yes) 4 No 2

Absent 0

Floor Assignment Senator Oehlke

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1190: Transportation Committee (Sen. G. Lee, Chairman) recommends **DO NOT PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1190 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

HB 1190

TOP STORY

TUESDAY, MARCH 22, 2005

State laws vary on driving distractions

By Eric Kelderman, Stateline.org Staff Writer

New Hampshire is the only state that doesn't require adult motorists to wear seat belts, but it does ticket drivers for eating, drinking, talking on a cell phone or fussing with their makeup while behind the wheel.

The state whose motto is "Live Free or Die" passed the nation's first law against distracted driving in 2001. Since then, every state has looked at ways to keep drivers' minds on the road, but lawmakers in most states are choosing to focus more narrowly on restricting cell phone use while driving.

Under New Hampshire's law, drivers face fines of up to \$1,000 if police find that any distracting activity caused to an accident, according to Peter Thomson, who heads New Hampshire's Highway Safety Agency.

In other states, the list of illegal distractions is shorter, including 38 states that prohibit drivers from watching television. Eleven states and the District of Columbia have laws restricting cell phones while driving, while 19 states also track mobile phone involvement in auto crashes.

Cellular communications companies and even some road-safety advocates argue that limits on cell phones miss the mark, saying New Hampshire's approach is better.

"If you're going to have a law, it should cover all distractions," said Jonathan Adkins of the Governors Highway Safety Association, the nonprofit association that represents state road safety offices. But a bill to punish distracted driving was voted down in a Maryland Senate committee this year, and similar bills in the Tennessee House and Senate are, so far, stuck in committees.

Laws against cell phones come in different varieties. New Jersey, New York and the District of Columbia require drivers to use a hands-free cell phone. School bus drivers are not allowed to talk on cell phones, except in emergencies, in Arizona, Arkansas, California, the District of Columbia, Delaware, Illinois, Massachusetts, New Jersey, Rhode Island and Tennessee.

And teen drivers are banned from talking on cell phones in the District of Columbia, Maine and New Jersey. Both chambers of the Maryland General Assembly now have voted to bar teens from using cell phones for the first 18 months after they earn their license, but a measure hasn't yet been sent to the governor.

In a move that protects drivers' freedom to use cell phones, seven states have passed laws that prevent a patchwork of varying municipal rules on the subject. Florida, Kentucky, Louisiana, Mississippi, Nevada, Oklahoma and Oregon restrict local governments from enacting their own laws on cell-phone use while driving.

This legislative season, lawmakers in 26 states have proposed 62 bills limiting cell phone use while driving, according to the National Conference of State Legislatures (NCSL). The most common proposals, in 14 states, would require that drivers use a headset to talk. Bills awaiting approval in 10 states would restrict younger drivers from cell phone use. And legislation in three states -- Connecticut, Indiana and New York -- would completely ban cell phone use by drivers.

The Governors Highway Safety Association supports cell phone restrictions for younger drivers, said Adkins. But there is no evidence that requiring a headset makes using a cell phone any safer, he said.

A University of Utah study released in February found that 18- to 25-year-old drivers talking on a cell phone with a headset reacted as slowly as 65- to 74-year-old drivers without cell phones. Older drivers also reacted more slowly while talking on cell phone, the report said.

Wireless phone companies, on the other hand, point to research that using a cell phone is among the least common distractions for drivers. A 2003 study funded by AAA found that fiddling with radio dials, eating and drinking, talking with passengers, grooming, reading and writing were more common activities for drivers than talking on a phone.

"There are numerous distractions that face drivers," said Joe Farren, a spokesman for the Cellular Telecommunications and Internet Association -- The Wireless Association, a lobbying group for cell phone companies. "For some reason, there is this laser-like focus on cell phones," he said.

The existing data suggest that cell phones are a factor in a tiny fraction of crashes. A 2003 report by NCSL said that crash data from seven states showed that cell phones were a factor in less than 1 percent of accidents. But the information is not conclusive, because there is not usually any physical evidence of cell phone use at a crash site, said Matt Sundeen, a transportation researcher at NCSL.

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HB 1190

Texting bans may add risk to roads

By Larry Copeland, USA TODAY

9-29-10

KANSAS CITY, Mo. — Laws banning texting while driving actually may prompt a slight increase in road crashes, research out today shows.

The findings, to be unveiled at a meeting here of 550 traffic safety professionals from around the USA, come amid a heightened national debate over distracted driving.

"Texting bans haven't reduced crashes at all," says Adrian Lund, president of the Insurance Institute for Highway Safety, whose research arm studied the effectiveness of the laws.

ROAD RISKS: Teens missing message on texting

DISTRACTED DRIVING: Other culprits get scant attention

Thirty states and the District of Columbia ban texting while driving; 11 of the laws were passed this year. The assertion that those efforts are futile will be a major issue at this week's annual meeting here of the Governors Highway Safety Association (GHSA).

Researchers at the Highway Loss Data Institute compared rates of collision insurance claims in four states — California, Louisiana, Minnesota and Washington — before and after they enacted texting bans. Crash rates rose in three of the states after bans were enacted.

The Highway Loss group theorizes that drivers try to evade police by lowering their phones when texting, increasing the risk by taking their eyes even further from the road and for a longer time.

The findings "call into question the way policymakers are trying to address the problem of distracted-driving crashes," Lund says, calling for a strategy that goes beyond cellphones to hit other behaviors such as eating and putting on makeup. "They're focusing on a single manifestation of distracted driving and banning it," he says.

Transportation Secretary Ray LaHood, disputes the findings. "Between 2005 and 2008, distracted driving-related fatalities jumped from 10% to 16% of all traffic fatalities," he says. "In 2009, for the first time in four years, distracted driving fatalities stopped rising, remaining at 16%. ... Tough laws are the first step and enforcement must be next. We know that anti-distracted-driving laws can be enforced effectively."

Last year in the USA, 5,474 people were killed and another 448,000 injured in crashes involving distracted driving, defined as operating a vehicle in a careless or inattentive manner, the government says.

Lack of enforcement is a likely factor if bans are ineffective, GHSA spokesman Jonathan Adkins says.

State Distracted Driving Laws Note

According to the Consumer Electronics Association, over the past year, state policymakers have focused on the activities and behaviors motorists engage in while operating a motor vehicle, especially with respect to distracted driving. State policy approaches to driver distraction must be driven by well-grounded science. Recent “real-world” data is now allowing people to understand the true impact of all distractions, including in-vehicle electronics, on driver performance, and the Consumer Electronics Association maintains that “Naturalistic” studies conducted under actual driving conditions should be given greater consideration than studies used with simulators.

One of those studies the Association cites is the “The 100-Car Naturalistic Driving Study” conducted by Virginia Tech Transportation Institute and released a few years ago. The 100-Car Naturalistic Driving Study is the first instrumented-vehicle study undertaken with the primary purpose of collecting large-scale, naturalistic driving data.

This study makes several important findings including the chances of an accident significantly increases when a driver engages in an activity that requires them to take their eyes off the road for more than two seconds. Additionally, the recent naturalistic driving studies have confirmed that manual texting while driving significantly increases the risk of a crash. Therefore, any state policymaking in this area should focus on those activities that require drivers to take their eyes off the road.

According to the Consumer Electronics Association, research has also shown that younger drivers typically do not have the skill set to perform secondary tasks while driving safely. Accordingly, it is important for initiatives that restrict mobile phone use for novice drivers or drivers operating under a graduated drivers’ license.

State policy considerations must take into account both the current state of technology and the likelihood of future innovations. Policies should be carefully calibrated so as not to inadvertently prohibit new technologies that could benefit drivers. For example, regulations should not prohibit voice-operated texting where the real concern is manual entry and operation of hand-held devices.

As such, state policy approaches should focus on driver behavior and activities rather than specific technologies or products. Scientific research has demonstrated driver distraction can arise from a wide variety of sources – conversations with passengers, eating, consuming beverages, smoking, tending to children, and other such activities. Many products developed today for consumers use while driving are intended to increase safety while on the roadways. In fact, consumer electronics manufactures have developed products to reduce the amount of time a driver must spend to take their eyes away from the road and products that are aimed at increasing safety, like global positioning systems, are a much safer alternative than reading large maps and confusion when lost.

At the state level, many bills have been proposed to restrict distracted driving. The behaviors these bills target range from restricting drivers under the age of 18 from engaging in certain activities to restricting certain behaviors such as texting while operating a motor vehicle and prohibit the use of products that require the driver to excessively remove their hands from the steering wheel. To date, three states have enacted laws that target the most egregious acts of distracted driving and focus on modifying driver’s behaviors rather than singling out certain products.

The most comprehensive bill has been enacted by Maine, which addresses the overall behavior of distracted driving while acknowledging that distractions may come from multiple sources. The state legislature in Maine passed LD 6 (Chapter Law 446) in 2009 as an Act to

establish a driver distraction law and focuses on the operation of a motor vehicle while distracted. The bill is very general and sends the signal that driving while distracted is problematic. This bill could be used to educate drivers about driver distractions and demonstrates a state commitment to ensuring motorists in their state drive safely and responsibly. Distracted driving infractions are considered secondary infractions.

Other states have addressed the specific issue of handheld texting while driving and use of in-vehicle technology by young or novice drivers:

In 2009, the Maryland legislature enacted Senate Bill 98 (Chapter Law 194), an Act concerning Motor Vehicles – Use of Text Messaging Device While Driving – Prohibition, which was a broad sweeping bill to ban the behavior of texting while driving. Specifically, this law prohibits a person from using a text messaging device to write or send a text message while operating a motor vehicle in motion or in the travel portion of the roadway; specifying exceptions for use of a global positioning system, or text messaging to contact a 911 system; etc. This law makes texting while driving a misdemeanor subject to a fine of not more than \$500.

In 2009, the Colorado legislature enacted House Bill 1094 (Chapter Law 375) which prohibited drivers under the age of 18 from using a wireless telephone to text or make phone calls while driving. Violations constitute a Class A traffic infraction, with a penalty of \$50. Fines increase for subsequent violations.

These three bills combined target the areas of largest concern for distracted driving and can serve as templates for other states to model. The bills target certain behaviors while driving such as texting and youth access as well as establishing a general fact that driving while distracted is dangerous. As the driver distraction issue is multifaceted, the three different pieces of legislation noted above provide reasonable, fact-based approaches to increasing roadway safety.

Interested readers can also access “A Sample Law to Prohibit Texting While Driving” and related information from Distraction.gov, and a 100-Car Naturalistic Study Fact Sheet by the Virginia Tech Transportation Institute.

HB1190 #4

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Establish a Distracted Driver Law

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 29-A MRSA §2117 is enacted to read:

§ 2117. Failure to maintain control of a motor vehicle

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Operation of a motor vehicle while distracted" means the operation of a motor vehicle by a person who, while operating the vehicle, is engaged in an activity:

(1) That is not necessary to the operation of the vehicle; and

(2) That actually impairs, or would reasonably be expected to impair, the ability of the person to safely operate the vehicle.

2. Failure to maintain control of a motor vehicle. A person commits the traffic infraction of failure to maintain control of a motor vehicle if the person:

A. Commits either a traffic infraction under this Title or commits the crime of driving to endanger under section 2413 and, at the time the traffic infraction or crime occurred, the person was engaged in the operation of a motor vehicle while distracted; or

B. Is determined to have been the operator of a motor vehicle that was involved in a reportable accident as defined in section 2251, subsection 1 that resulted in property damage and, at the time the reportable accident occurred, the person was engaged in the operation of a motor vehicle while distracted.

A person may be issued a citation or summons for any other traffic infraction or crime that was committed by the person in relation to the person's commission of the traffic infraction of failure to maintain control of a motor vehicle.

Effective September 12, 2009

Few texting-while-driving arrests so far

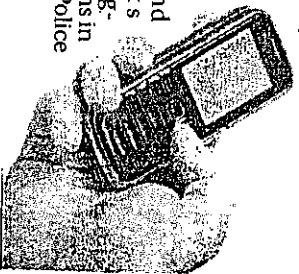
By JENNY MICHAEL
Bismarck Tribune

The 2011 North Dakota Legislature seems likely to move forward on some form of prohibition against texting while driving. However, cities in the state that already passed such bans

have not exactly been running out of citation forms over the offenses.

Bismarck and Grand Forks passed texting-while-driving bans in the fall of 2010. Police

Continued on 6A



Texting while driving

have issued few citations in either city.

The Legislature has three bills on the table that would, in some form, limit use of electronic devices. One would ban texting while driving, another would create a new offense of "distracted driving" and a third would limit the use of electronic devices by drivers younger than 18.

The proposed statewide texting ban would make texting while driving a primary offense for which a law enforcement officer could make a stop. A third

offense would result in the loss of driving privileges for a year. Distracted driving would be a secondary offense, and law enforcement officers could issue a citation for it upon witnessing an activity that takes a driver's attention away when they have stopped someone for something else.

The distracted driving bill, HB1190, and the texting ban bill, HB1195, have passed the state House. The state Senate has not acted on them.

Another bill, which the House has not voted on yet,

would establish a graduated driver's licensing program in the state. North Dakota is the only state without such a law. Part of HB1256 would prohibit drivers younger than 18 from using electronic devices while driving unless it's an emergency.

Local governments in Grand Forks and Bismarck passed texting-and-driving bans in September and October, respectively.

Bismarck police didn't start enforcing the new ordinance until Nov. 15 to allow adequate time to warn the public. In the nearly 11

months since they began enforcing the ban, four people have been cited under the new ordinance, Sgt. Mark Buschena said.

Presumably, more than four people have sent a text message while driving in Bismarck since Nov. 15. Buschena explained the difficulty in issuing citations under the texting ban, saying officials need reasonable suspicion that someone is committing an offense before they can pull a vehicle over. That's a lot easier in the case of someone running a stop sign than in the case of

someone possibly sending a text message or e-mail or surfing the Internet while driving, he said.

Officers must be in a position to see that a driver is using a mobile device, not a GPS unit or mp3 player, and is texting, sending an e-mail or using the Internet, not making a phone call, Buschena said. He said it is very hard to build reasonable suspicion unless the officer happens to pull up next to someone at a stoplight who is doing something prohibited by the law.

"All of our officers are aware of it," he said. "They are looking for it."

(Reach reporter Jenny Michael at 250-8225 or jenny.michael@bismarcktribune.com.)

Continued from 1A

In Grand Forks, one person has been cited and one person has been issued a warning under the law, Lt. Grant Schuller said. Police are looking to educate the public about the dangers of texting while driving and will "take action" if they see someone violate the law.

"All of our officers are aware of it," he said. "They are looking for it."

#1

Woman runs red light, strikes bus

March 9, 2011

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A Minot woman was injured Monday morning when the vehicle she was driving entered the intersection on a red light and was struck by a school bus.

Senior Officer Chad Faken of the Minot Police Department said the accident occurred at the intersection of 11th Avenue and 16th Street Southwest. Tiffany Smith, 24, told police she was leaning back talking to a child in her vehicle when she ran the red light and was struck by the bus, which was driven by Lisa Robinson.

The accident occurred around 6:45 a.m., and there were no children on the bus at the time.

Smith was transported to Trinity Hospital. The child in her vehicle was not injured.

- Dave Caldwell

State laws vary on driving distractions

By Eric Kalderman, Stateline.org Staff Writer

New Hampshire is the only state that doesn't require adult motorists to wear seat belts, but it does ticket drivers for eating, drinking, talking on a cell phone or fussing with their makeup while behind the wheel.

The state whose motto is "Live Free or Die" passed the nation's first law against distracted driving in 2001. Since then, every state has looked at ways to keep drivers' minds on the road, but lawmakers in most states are choosing to focus more narrowly on restricting cell phone use while driving.

Under New Hampshire's law, drivers face fines of up to \$1,000 if police find that any distracting activity caused to an accident, according to Peter Thomson, who heads New Hampshire's Highway Safety Agency.

In other states, the list of illegal distractions is shorter, including 38 states that prohibit drivers from watching television. Eleven states and the District of Columbia have laws restricting cell phones while driving, while 19 states also track mobile phone involvement in auto crashes.

Cellular communications companies and even some road-safety advocates argue that limits on cell phones miss the mark, saying New Hampshire's approach is better.

"If you're going to have a law, it should cover all distractions," said Jonathan Adkins of the Governors Highway Safety Association, the nonprofit association that represents state road safety offices. But a bill to punish distracted driving was voted down in a Maryland Senate committee this year, and similar bills in the Tennessee House and Senate are, so far, stuck in committees.

Laws against cell phones come in different varieties. New Jersey, New York and the District of Columbia require drivers to use a hands-free cell phone. School bus drivers are not allowed to talk on cell phones, except in emergencies, in Arizona, Arkansas, California, the District of Columbia, Delaware, Illinois, Massachusetts, New Jersey, Rhode Island and Tennessee.

And teen drivers are banned from talking on cell phones in the District of Columbia, Maine and New Jersey. Both chambers of the Maryland General Assembly now have voted to bar teens from using cell phones for the first 18 months after they earn their license, but a measure hasn't yet been sent to the governor.

In a move that protects drivers' freedom to use cell phones, seven states have passed laws that prevent a patchwork of varying municipal rules on the subject. Florida, Kentucky, Louisiana, Mississippi, Nevada, Oklahoma and Oregon restrict local governments from enacting their own laws on cell-phone use while driving.

This legislative season, lawmakers in 26 states have proposed 62 bills limiting cell phone use while driving, according to the National Conference of State Legislatures (NCSL). The most common proposals, in 14 states, would require that drivers use a headset to talk. Bills awaiting approval in 10 states would restrict younger drivers from cell phone use. And legislation in three states -- Connecticut, Indiana and New York -- would completely ban cell phone use by drivers.

The Governors Highway Safety Association supports cell phone restrictions for younger drivers, said Adkins. But there is no evidence that requiring a headset makes using a cell phone any safer, he said.

A University of Utah study released in February found that 18- to 25-year-old drivers talking on a cell phone with a headset reacted as slowly as 65- to 74-year-old drivers without cell phones. Older drivers also reacted more slowly while talking on cell phone, the report said.

Wireless phone companies, on the other hand, point to research that using a cell phone is among the least common distractions for drivers. A 2003 study funded by AAA found that fiddling with radio dials, eating and drinking, talking with passengers, grooming, reading and writing were more common activities for drivers than talking on a phone.

"There are numerous distractions that face drivers," said Joe Farren, a spokesman for the Cellular Telecommunications and Internet Association -- The Wireless Association, a lobbying group for cell phone companies. "For some reason, there is this laser-like focus on cell phones," he said.

The existing data suggest that cell phones are a factor in a tiny fraction of crashes. A 2003 report by NCSL said that crash data from seven states showed that cell phones were a factor in less than 1 percent of accidents. But the information is not conclusive, because there is not usually any physical evidence of cell phone use at a crash site, said Matt Sundeen, a transportation researcher

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Texting bans may add risk to roads

By Larry Copeland, USA TODAY

9-29-10

KANSAS CITY, Mo. — Laws banning texting while driving actually may prompt a slight increase in road crashes, research out today shows.

The findings, to be unveiled at a meeting here of 550 traffic safety professionals from around the USA, come amid a heightened national debate over distracted driving.

"Texting bans haven't reduced crashes at all," says Adrian Lund, president of the Insurance Institute for Highway Safety, whose research arm studied the effectiveness of the laws.

ROAD RISKS: Teens missing message on texting

DISTRACTED DRIVING: Other culprits get scant attention

Thirty states and the District of Columbia ban texting while driving; 11 of the laws were passed this year. The assertion that those efforts are futile will be a major issue at this week's annual meeting here of the Governors Highway Safety Association (GHSA).

Researchers at the Highway Loss Data Institute compared rates of collision insurance claims in four states — California, Louisiana, Minnesota and Washington — before and after they enacted texting bans. Crash rates rose in three of the states after bans were enacted.

The Highway Loss group theorizes that drivers try to evade police by lowering their phones when texting, increasing the risk by taking their eyes even further from the road and for a longer time.

The findings "call into question the way policymakers are trying to address the problem of distracted-driving crashes," Lund says, calling for a strategy that goes beyond cellphones to hit other behaviors such as eating and putting on makeup. "They're focusing on a single manifestation of distracted driving and banning it," he says.

Transportation Secretary Ray LaHood, disputes the findings. "Between 2005 and 2008, distracted driving-related fatalities jumped from 10% to 16% of all traffic fatalities," he says. "In 2009, for the first time in four years, distracted driving fatalities stopped rising, remaining at 16%. ... Tough laws are the first step and enforcement must be next. We know that anti-distracted-driving laws can be enforced effectively."

Last year in the USA, 5,474 people were killed and another 448,000 injured in crashes involving distracted driving, defined as operating a vehicle in a careless or inattentive manner, the government says.

Lack of enforcement is a likely factor if bans are ineffective, GHSA spokesman Jonathan Adkins says.

State Distracted Driving Laws Note

According to the Consumer Electronics Association, over the past year, state policymakers have focused on the activities and behaviors motorists engage in while operating a motor vehicle, especially with respect to distracted driving. State policy approaches to driver distraction must be driven by well-grounded science. Recent “real-world” data is now allowing people to understand the true impact of all distractions, including in-vehicle electronics, on driver performance, and the Consumer Electronics Association maintains that “Naturalistic” studies conducted under actual driving conditions should be given greater consideration than studies used with simulators.

One of those studies the Association cites is the “The 100-Car Naturalistic Driving Study” conducted by Virginia Tech Transportation Institute and released a few years ago. The 100-Car Naturalistic Driving Study is the first instrumented-vehicle study undertaken with the primary purpose of collecting large-scale, naturalistic driving data.

This study makes several important findings including the chances of an accident significantly increases when a driver engages in an activity that requires them to take their eyes off the road for more than two seconds. Additionally, the recent naturalistic driving studies have confirmed that manual texting while driving significantly increases the risk of a crash. Therefore, any state policymaking in this area should focus on those activities that require drivers to take their eyes off the road.

According to the Consumer Electronics Association, research has also shown that younger drivers typically do not have the skill set to perform secondary tasks while driving safely. Accordingly, it is important for initiatives that restrict mobile phone use for novice drivers or drivers operating under a graduated drivers’ license.

State policy considerations must take into account both the current state of technology and the likelihood of future innovations. Policies should be carefully calibrated so as not to inadvertently prohibit new technologies that could benefit drivers. For example, regulations should not prohibit voice-operated texting where the real concern is manual entry and operation of hand-held devices.

As such, state policy approaches should focus on driver behavior and activities rather than specific technologies or products. Scientific research has demonstrated driver distraction can arise from a wide variety of sources – conversations with passengers, eating, consuming beverages, smoking, tending to children, and other such activities. Many products developed today for consumers use while driving are intended to increase safety while on the roadways. In fact, consumer electronics manufactures have developed products to reduce the amount of time a driver must spend to take their eyes away from the road and products that are aimed at increasing safety, like global positioning systems, are a much safer alternative than reading large maps and confusion when lost.

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HB1190 #5

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Effective September 12, 2009